



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

December 3, 2015
ADV PR 15-03

Richard M. Coen, Esquire

Re: In re City of Woonsocket Wastewater Treatment Facility

Dear Attorney Coen:

In your capacity as legal counsel for the City of Woonsocket ("City"), you have requested an Access to Public Records Act ("APRA") Advisory Opinion. Specifically, you sought this Department's advice concerning:

"[b]y agreement dated June 27, 2012, the City engaged CH2M Hill Engineers, Inc (the 'Contractor') to undertake the major upgrades to the City's wastewater treatment facility (the 'Agreement'). The Agreement was the result of a public procurement pursuant to a request for proposals issued by the City (the 'RFP'). The Contractor and two other bidders submitted proposals in response to the RFP.

Included within the Contractor's proposal and in the Agreement itself are certain schedules that included financial information regarding the Contractor's bid (the 'Financial Data'). The Contractor has taken the position that the Financial Data is exempted from disclosure pursuant to the * * * APRA. The Contractor has indicated that, if the Financial Data is disclosed, its competitors may gain an advantage by learning of the structuring of the Contractor's bid. In support of this position, the Contractor provided the City with a copy of the * * * Attorney General Unofficial Finding, PR 00-09, *Cahill v. Housing Authority of the City of Pawtucket*. Specifically, the Contractor's position is that R.I. Gen. Laws § 38-2-2(4)[](B) exempts the Financial Data as commercial and trade secret information."

In a subsequent correspondence you provided “the full City-CH2M Hill contract; the schedules to the contract, and the CH2M Hill Proposal Forms that CH2M Hill would like redacted.” You also advised that proposals had been evaluated “in accordance with RIGL 44-55-1 et seq.”

You seek this Department’s advisory opinion as to whether the APRA exempts from disclosure the Financial Data contained in the proposal and the Agreement’s schedules. You provided a copy of all the records for this Department’s in camera review and advised that the Contractor believes that certain information is exempt since public disclosure would provide competitors a competitive advantage by learning the structuring of the Contractor’s bid.

Because this advisory request had been pending for some time, in December 2014, this Department contacted you to determine whether the City continued to seek this Department’s advice. A month later, you replied that the City “would still like the opinion” because “Woonsocket is about to seek a private contractor for a new water treatment plant project, so the same issues may come up there as well.” Later, when this Department inquired whether the specific documents at issue in the instant advisory request were “still at issue,” you replied that the inquiry that served as the basis for the instant advisory request “has been dormant.” Nonetheless, you advised that the “same company will be bidding on another, similar project that is just going out to bid in the same municipality, so I expect the issue is going to come up again, either with respect to the original project or the new one.”

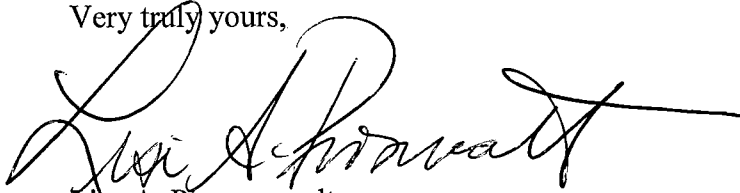
It is this Department’s practice/policy to issue Advisory Opinions only on pending matters. See Chrabaszcz v. Johnston School Department, PR 04-15. In this case, we were advised by the City’s legal counsel “the same company will be bidding on another, similar project that is just going out to bid in the same municipality, so * * * the issue is going to come up again, either with respect to the original project or the new one.” While we have no reason to doubt the City’s advisement, our determination of whether a particular document is exempt – or not – under the APRA requires a case-by-case analysis where we apply the APRA to the particular document at issue. Respectfully, to speculate on the nature of a future document at issue – and even the nature of any information that a future successful bidder may believe is exempt – would not be consistent with our precedent or the APRA. Indeed, even the statutory authority for the bidding process may change and the statutory authority would be an additional consideration that this Department would review. While we acknowledge that this advisory opinion request had been pending for some time, considering our practice/policy and the fact that not even the City can direct us to a document that is currently at issue, it is far more appropriate that we decline to issue an advisory opinion at this time. In doing so, we would also note that although the instant advisory request indicates the portions of the Agreement that the Contractor believes are exempt from public disclosure, this Department has been provided no basis to substantiate the Contractor’s position. Whether a valid APRA exemption applies, we leave for another day when an appropriate matter and supporting record is before this Department. See Providence Journal Co. v.

Convention Center Authority, 774 A.2d 40 (R.I. 2001). For these reasons, we respectfully decline to issue an Advisory Opinion.

This Advisory Opinion does not abrogate any rights that the Department of Attorney General is vested with pursuant to R.I. Gen. Laws § 38-2-8 and is strictly limited to the Department of Attorney General's interpretation of the APRA. This Advisory Opinion does not consider the City's responsibility under any other State law, rule, regulation, or ordinance. This Opinion also does not shield the City from a complaint filed in the Superior Court by a citizen or entity pursuant to R.I. Gen. Laws § 38-2-8 or any other authority.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lisa A. Pinsonneault', with a long horizontal flourish extending to the right.

Lisa A. Pinsonneault

Special Assistant Attorney General